

LILLIAN E. FINKLEA

IBLA 81-192

Decided March 30, 1982

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application NM 42163.

Vacated and remanded.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Applications: Filing

Where an oil and gas lease applicant who is an employee, but not a client of a leasing service and has no agreement with the leasing service, uses the service's parcel selection information to complete her application, the leasing service is not her agent within the meaning of 43 CFR 3102.2-6 and the documents required by that regulation need not be filed.

APPEARANCES: Don M. Fedric, Esq., for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Lillian E. Finklea appeals from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated November 4, 1980, rejecting her oil and gas lease application which was drawn with first priority for parcel NM 682 (NM 42163) in a simultaneous drawing held on August 21, 1980. Subsequent to the drawing, BLM requested that appellant provide additional information concerning the formulation of her application by answering questions to BLM's "Additional Evidence Required" decision. Appellant completed the inquiry which was filed with BLM on October 17, 1980.

In her response to question 1 of that inquiry, appellant stated that she did receive assistance in filling out and/or filing the simultaneous oil and gas lease application. In answering question 1(a) appellant explained the relationship of the entity that provided her with assistance as follows: "I have been employed by Federal Oil & Gas Leases, Inc. since 1976. As an employee I have access to their recommendations, my selection was made from their July list. I personally filled out and signed the entry card. The above company is a filing service." In responding to question 1(b) appellant admitted that she did not submit a personally signed statement as to any understanding, or a personally signed copy of any agreement with the filing service contending that "[n]o such agreement exists."

In its decision rejecting her lease offer, BLM stated:

An Additional Evidence Required Decision dated October 7, 1980, was completed and returned to this office on October 17, 1980, by Lillian E. Finklea.

Ms. Finklea states under Item No. 1(a) that she received assistance from Federal Oil and Gas Lease, Inc., which is in the business of providing assistance to participants in a Federal Oil and Gas Leasing program.

Ms. Finklea also states under Items 1(b), (c), and (d) that a personally signed statement of any understanding or agreement or contract was not filed with the lease application. She also states that the Agent did not file a copy of the agreement or statement nor a list setting forth the names and addresses of applicants participating under the agreement.

Therefore, compliance was not made with Regulations 43 CFR 3102.2-6(a) and (b), and the offer to lease is rejected.

The provisions of 43 CFR 3102.2-6(a) state:

Any applicant receiving the assistance of any other person or entity which is in the business of providing assistance to participants in a Federal oil and gas leasing program shall submit with the lease * * * application * * * a personally signed statement as to any understanding, or a personally signed copy of any written agreement or contract under which any service related to Federal oil and gas leasing or leases is authorized to be performed on behalf of such applicant. Such agreement or understanding might include, but is not limited to: A power of attorney; a service agreement setting forth duties and obligations; or a brokerage agreement.

The phrase "person or entity in the business of providing assistance to participants in a Federal oil and gas leasing program," is defined by 43 CFR 3100.0-5(d) as meaning

those offering services for consideration in connection with the acquisition of Federal oil and gas leases. Included in this definition are those enterprises, commonly known as filing services, which sign, formulate, prepare, offer advice on formulation or preparation, mail, deliver, receive mail or otherwise complete or file lease applications or offers for consideration. Excluded from the definition are those services which only tangentially relate to Federal oil and gas lease acquisition, such as general secretarial assistance, or general geologic advice which is not specifically related to Federal lease parcels or leasing.

In her statement of reasons appellant contends that BLM considered only her acknowledgement of having received assistance from the filing service but ignored the circumstances of such assistance. She states that she worked for

a filing service company and admitted having used the parcel selection information of that company for her own purposes; that she was not a client of the service and had no agreement or understanding with the service company; and that no filing service was authorized to perform services on her behalf. Attached to the statement of reasons were affidavits from appellant and Judi Boston, President of Federal Oil and Gas Leases, Inc., supporting appellant's contention that no understanding or agreement or client relationship existed between appellant and the filing service.

[1] Federal Oil and Gas Leases, Inc., is clearly an "entity in the business of providing assistance to participants in a Federal oil and gas leasing program" as defined by 43 CFR 3100.0-5(d). The Board has held that if a leasing service does no more than provide a list of recommended parcels for a drawing and receives consideration for its recommendations, such action makes the service an agent pursuant to 43 CFR 3102.2-6(a) for which the disclosure requirements apply. Bernard S. Storper, 60 IBLA 67, 68 (1981). In the case in issue, however, appellant did not pay consideration to Federal Oil and Gas Leases, Inc., and there was no agreement by which the corporation was to perform services for appellant.

As explained by appellant in her response to BLM's inquiry, she had access to Federal Oil and Gas Leases, Inc.'s, recommendations by reason of her employment, but she personally filled out and signed the entry card. She stated that no agreement existed between Federal Oil and Gas Leases, Inc. Appellant's assertions are supported by Ms. Boston's affidavit which reads in pertinent part:

2. Lillian E. Finklea * * * is one of the employees of Federal Oil and Gas Leases, Inc., and in her normal everyday employment activities, she is made aware of and is knowledgeable of the general business affairs of the company and of the services performed by the company. Further, in connection with the employment activities of Lillian E. Finklea, she is cognizant of the content of the list of parcels recommended by our company to clients who wish to file for federal oil and gas leases in the non-competitive simultaneous filing program.

3. Lillian E. Finklea has no understanding or oral or written agreement or contract with Federal Oil and Gas Leases, Inc., under which any services related to federal oil and gas leasing or leases are authorized to be performed on behalf of Lillian E. Finklea. No such understanding or agreement has ever existed, and Federal Oil and Gas Leases, Inc. has nothing whatsoever to do with any past, present or future filings for federal oil and gas leases made by Lillian E. Finklea or with any leases won by her.

4. Lillian E. Finklea was not a subscriber or client of Federal Oil and Gas Leases, Inc., therefore, prior to July, 1980 was not listed and had never been listed on a list of names and addresses of our subscribers or clients.

We find that no agency relationship existed within the meaning of 43 CFR 3102.2-6 and that appellant was therefore not required to file the disclosure statements.

This case is remanded to the State Office for issuance of the lease, if all other qualifications are met.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed is vacated and remanded to the New Mexico State Office.

Gail M. Frazier
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge

